

### REMARKS

Claims 1-10, 12-28 and 30-38 are pending in the application. The Examiner is respectfully requested to reconsider and withdraw the objections and rejections in view of the amendments and remarks herein.

#### *Claim Rejections – 35 USC § 102*

Claims 1, 13-16, 18, 21, 30, and 31 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 5,671,362 to Crowe et al. ("Crowe"). This rejection is respectfully traversed.

As outlined in Applicants' previous response, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference,"<sup>1</sup> and "[t]he identical invention must be shown in as complete detail as is contained in the ... claim,"<sup>2</sup> when applying a reference under 35 U.S.C. §102. As discussed in further detail below, Crowe fails to set forth each and every element as is contained in either claim 1 or claim 21, and fails to show the method and apparatus in as complete detail as is contained in claims 1 and 21, respectively.

Claims 1 and 21 include the features of comparing initial and current state output signals to determine a load change on a load storage device, and determining an identity of an item associated the load storage device from a plurality of items potentially included in a load positioned upon the load storage device based on the load change. Claim 1 has been amended herein to further include the feature of the determining being executed by a processor that uses the load change as an input. Crowe fails to disclose at least these features of claims 1 and 21.

As discussed in Applicants' previous response, Crowe is directed to a materials monitoring system that includes an electronic shelf unit 10 that can sense and report product usage or withdrawals, by sensing the presence or absence of product items 30 in storage on the shelf unit (see col. 5, lines 37-40, for example). More specifically, the shelf unit 10 includes a sensing grid 32 that comprises an array of sensor, such as pressure transducers, that are sensitive

---

<sup>1</sup> *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

<sup>2</sup> *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

to the weight and form of a product item 30 (see col. 8, lines 1-5). The presence or absence of a product item can be determined based on signals from the sensing grid 32.

In rejecting claims 1 and 21, the Examiner cites col. 11, lines 43-47 of Crowe as disclosing an identity of an item being determined from a plurality of items based on a load change. Applicants respectfully note that an accurate reading of Crowe discloses no such feature. More specifically, the cited passage of Crowe provides:

Should an item 30 be moved on shelf 20, the electronics will track the movement and note the new location. Should an item be removed completely from the shelf, that fact is reported to the vendor as an inventory withdrawal. Should an item be removed then replaced, the action can be reported with an annotation querying the identity of the returned item, such queries to be resolved by manual inspection during the vendor's representative's next visit. (col. 11, lines 40-47, emphasis added)

Accordingly, the system of Crowe can only initiate a query in response to an item being replaced. The system of Crowe, however, cannot itself resolve the query and identify the product that was replaced. Instead, the identity of the replaced item is subsequently resolved by "manual inspection during the vendor's representative's next visit." To that end, Crowe provides that each of the product items 30 includes a machine-readable label 31 (e.g., a bar code), which machine-readable label is scanned to determine the identity of a particular product item 30 associated with the shelf unit 10 (e.g., during the manual inspection of the vendor's representative).

In view of the foregoing, Crowe fails to disclose the features of comparing initial and current state output signals to determine a load change on a load storage device, and determining an identity of an item associated the load storage device from a plurality of items potentially included in a load positioned upon the load storage device based on the load change, wherein the determining is executed by a processor that uses the load change as an input, as recited in claim 1. Further, Crowe fails to disclose the features of a processor that determines an identity of an item associated with the load storage device from a plurality of items potentially included in a load positioned upon the load storage device based on the load change, as recited in claim 21. Consequently, Crowe fails to set forth each and every element as is contained in either claim 1 or claim 21, and fails to show the method and product in as complete detail as is contained in

claims 1 and 21, respectively. Therefore, reconsideration and withdrawal of the rejections are respectfully requested.

Each of claims 13-16, 18, 30 and 31 ultimately depends from one of claims 1 and 21, which define over the asserted reference, as discussed in detail above. Consequently, each of claims 13-16, 18, 30 and 31 also define over the asserted reference for at least the same reasons. Therefore, reconsideration and withdrawal of the rejections are respectfully requested.

*Claim Rejections – 35 U.S.C. §103*

Claims 2-9, 12, 19, 20, 22-27, 32, and 33 stand rejected under 35 U.S.C. §103(a) as being obvious over Crowe in view of U.S. Pat. No. 4,674,605 to McPherson et al. ("McPherson"). Claims 10, 12 and 28 stand rejected under 35 U.S.C. §103(a) as being obvious over Crowe in view of McPherson, in further view of Official Notice. Claim 17 stands rejected under 35 U.S.C. §103(a) as being obvious over Crowe in view of McPherson, in further view of U.S. Pat. No. 6,450,299 to Lysaught ("Lysaught"). These rejections are respectfully traversed.

Each of claims 2-10, 12, 13, 19, 20, 22-28, 32, and 33 ultimately depends from one of claims 1 and 21, which define over the asserted reference, as discussed in detail above. Consequently, each of claims 2-10, 12, 13, 19, 20, 22-28, 32, and 33 also defines over the asserted reference for at least the same reasons. Therefore, reconsideration and withdrawal of the rejections are respectfully requested.

With regard to the subject matter of original claims 10, 12, 28 and 29, in particular, the Examiner again states that "the Examiner takes Official Notice that it would have been obvious to a person of ordinary skill in the art to compare weights and select items in order to justify and verify the change in load." (see final Office Action, paragraph 6 on page 7). As discussed in Applicants' previous response, the Examiner's use of an official notice is improper and is unsupported. With regard to this, Applicants incorporate the detailed discussion outlined on pages 10-11 of the response filed on May 6, 2008.

Claims 34-38 stand rejected under 35 U.S.C. §103(a) as being obvious in view of the combination of Crowe and U.S. Pub. No. 2004/0139806 to Christmas ("Christmas").

Claim 34 includes the features of a database operable to store a plurality of load records, each load record corresponding to an item type, and a load monitoring system operable to input

the load signals and access the database, to thereby output the item type corresponding to the load based on the load records. As outlined by way of non-limiting example (see page 5, lines 11-22 of the original specification) in Applicants' previous response, the system of claim 34 can determine that an item was added to the load storage device, as well as the identity of the item based on the weight of the item. Applicants again note that Crowe fails to disclose at least these features of claim 34, and that Christmas fails to cure the deficient disclosure of Crowe.

As discussed in detail above, Crowe describes a materials monitoring system that includes an electronic shelf unit 10 that can sense and report product usage or withdrawals, by sensing the presence or absence of product items 30 in storage on the shelf unit. Further, Crowe explicitly provides that an item identifier is entered for each product item 30 placed on the shelf unit 10 by scanning the machine-readable label 31. Consequently, Crowe does not access using load signals to thereby output the item type corresponding to the load based on the load records.

As described in Applicants' previous response, Christmas describes a load monitoring and inventory management system for use with a load conveyor. A bar code reader 26 is used to read bar code data from a bar code 40 that is affixed to each load L (see paragraph [0048], and Fig. 6). When a load L is being transported, a sensor unit S measures the magnitude of the load and the data is passed to a processor 30, which uses a look-up table to identify the weight per item of the load type that has been read from the bar code. The processor 30 then calculates the number of items making up that load from the measured load magnitude and this value is stored.

Accordingly, Christmas implements a bar code scanning process to determine the item type of the load being transported. Once the item type is determined using the bar code scanning process, the weight of an item for that item type is determined from the information stored in memory, and the total load weight is divided by the weight per item to determine the number of items being transported. Consequently, Christmas fails to describe determining the item type based on the load of the particular item.

As discussed in detail above, Crowe and Christmas, taken either alone or in combination, fail to disclose all of the features of claim 34. Therefore, reconsideration and withdrawal of the rejection are respectfully requested.

Each of claims 35-38 ultimately depends from claim 34, which defines over the asserted reference, as discussed in detail above. Consequently, each of claims 35-38 also defines over the

asserted reference for at least the same reasons. Therefore, reconsideration and withdrawal of the rejections are respectfully requested.

*Response to Examiner's Arguments*

On page 10, paragraph 9 of the final Office action, the Examiner notes that "Applicant's arguments with respect to claims 1-20, 12-28, 30-38 have been considered but are moot in view of the new grounds of rejection." Applicants respectfully note that the final Office action of August 4, 2008 includes no new grounds of rejection. More specifically, each of claims 1-20, 12-28, 30-38 have been rejected in the final Office action on the same grounds as each was rejected in the previous Office action, dated February 15, 2008.

Further, and with regard to Applicants' assertion that the Examiner's Official Notice with respect to claims 10, 12, 28 and 29 is improper, the Examiner has stated that Applicants have failed to state the reasons why the features of claims 10, 12, 28 and 29 are not well known. Applicants respectfully note that the initial burden is on the Examiner to provide specific reasons why such features are well known, and a simple statement by the Examiner that each is well known does not suffice.


CONCLUSION

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reason for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to amendment. Applicants respectfully request consideration of all filed IDS' not previously considered, by initialing and returning each Form 1449.

No charges are believed due. However, if any fees are due, they are being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply all charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No.13909-0141001.

Respectfully submitted,

Date: October 2, 2008

  
Ryan McCarthy  
Reg. No. 50,636

Fish & Richardson P.C.  
One Congress Plaza, Suite 810  
111 Congress Avenue  
Austin, TX 78701  
Telephone: (512) 472-5070  
Facsimile: (877) 769-7945